

DOCKET NUMBER 32-2

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ALAN STANLY
 6
 7

8 **UNITED STATES BANKRUPTCY COURT**
 9 **SOUTHERN DISTRICT OF CALIFORNIA**
 10

11 In Re:	)	Case No. 05-05926-PBINV
)	
12 FRANCIS J. LOPEZ, an individual,	)	Involuntary Chapter 7
)	
13 Alleged Debtor.	)	DECLARATION OF L. SCOTT KEEHN IN
	)	OPPOSITION TO MOTION BY ALLEGED
	)	DEBTOR FOR AN ORDER BIFURCATING
	)	TRIAL RE INVOLUNTARY PETITION;
	)	SETTING DEADLINE TO ADD NEW
	)	PETITION CREDITORS; AND
	)	REQUIRING THE POSTING OF A BOND
)	
)	
	)	Date: December 19, 2005
	)	Time: 10:00 a.m.
	)	Judge: Hon. Peter W. Bowie
	)	Dept.: Four (4)
)	
20 _____)	

21 1. I am an attorney at law, licensed to practice law in the State of California, and
 22 admitted to practice before the United States District Court for the Southern District of California.
 23 I am a shareholder of the firm of Robbins & Keehn, APC, the attorneys of record for Alan Stanly
 24 ("Stanly"), petitioning creditor in the above-entitled proceedings. I am the *Shareholder in Charge*
 25 of the firm's engagement on behalf of Mr. Stanly, and make the following declaration based upon
 26 facts within my first hand knowledge, acquired during the performance of activities that were
 27 within the course and scope of the firm's engagement on behalf of Stanly.

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1 2. On September 19, 2005, Francis J. Lopez, the alleged debtor herein ("Lopez"),
2 filed his "Declaration of Francis J. Lopez Re Creditors" (the "Lopez Decl.", Docket Item No. 25),
3 in which he purports to identify a total of 22 creditors who hold claims which are neither
4 contingent or subject to a bona fide dispute (other than the Stanly Judgment which Lopez has
5 appealed), nor are they claims of employees and insiders.

6 3. Upon receiving the Lopez Declaration, as Stanly's counsel I caused to be issued
7 subpoenas to twelve of the alleged creditors listed in therein (i.e. where the addresses listed were
8 sufficient to effectuate service), and the discovery process is ongoing. The purpose of Stanly's
9 discovery is to determine whether, in fact, these additional, newly-disclosed claims meet the
10 criteria set forth in §303(b). In order to qualify, each of these creditor's claims must be: (i) non-
11 contingent; (ii) not the subject of a bona fide dispute; (iii) not held by an entity that is a transferee
12 of a transfer that is voidable under sections 544, 545, 547, 548, 549, or 725(a); and (iv) not held by
13 an employee or insider of Lopez.

14 4. Stanly's discovery is intended to facilitate the determination of whether each of
15 these claims actually existed at the time the petition was filed. A number of the claims appear to
16 be for services which are typically paid in advance. For example, Lopez has listed Verizon
17 Wireless as holding a claim for \$45.00. This appears to be the amount due for one months basic
18 services under a normal cell phone contract. Typically, these fees are paid in advance of the
19 services actually being rendered. Accordingly, as the services have not yet been provided, an
20 actual claim has not yet been created. I believes that discovery will confirm that Verizon's alleged
21 "claim" does not meet the criteria of §303(b)(2).

22 5. Stanly's discovery is also intended to disclose whether any of these claims are
23 subject to being voided pursuant to the provisions cited in §303(b)(2), particularly the avoidance
24 provisions regarding preferences under §547. While Lopez contends that none of his creditors
25 received payments that were outside the ordinary coarse of business, this assertion is an improper
26 legal conclusion that must be subjected to the rigorous test required by the Bankruptcy Code. The
27 only way to do that is to allow Stanly to complete his discovery.

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1 6. Finally, American Express, one of the creditors identified in the Lopez Declaration,
2 has responded to Stanly's subpoena by sending a letter stating that they have no documentation
3 which is responsive to the subpoenas — that there is nothing that supports any claim against
4 Lopez. The letter from American Express is attached hereto as Exhibit "A".

5 7. I had originally intended to serve written discovery on Francis Lopez without
6 waiting to receive documents from the various putative creditors upon whom document subpoenas
7 had been served. However, upon reflection, I realize that the scope of discovery required for Mr.
8 Lopez might well be narrowed, or the focus re-directed, based upon a review of the documents
9 produced in response to the various subpoenas. Accordingly, the *game plan* changed. We now
10 have documentation from some of the entities upon whom the subpoenas were served, and are in
11 the process of enforcing subpoenas as to the others. Accordingly, we are now issuing our
12 preliminary written discovery upon the alleged debtor.

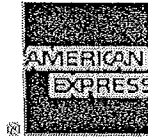
13 I declare under the penalty of perjury that the foregoing is true and correct. Executed this
14 5th day of December, 2005, at San Diego, California.

15
16 Dated: December 5, 2005

ROBBINS & KEEHN
A Professional Corporation

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18
19 By: /s/ L. Scott Keehn
L. Scott Keehn
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EXHIBIT A



Cards

American Express Cards
777 American Expressway
Ft. Lauderdale, FL 33337

October 19, 2005

L. Scott Keehn
L. Scott Keehn
530 B Street Suite 2400
San Diego, CA 92101

RE: Francis J. Lopez
Our File No: 05285GIM3263415

Dear Sir / Madam:

Please be advised that American Express Travel Related Services, Company, Inc. / American Express Centurion Bank is unable to comply with the above referenced subpoena request for the following reason(s):

- American Express Travel Related Services Company, Inc. does not have records responsive to the subpoena request

If we can be of further assistance please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Y. Salas".

Linda Y Salas, Subpoena Correspondent
Assistant to the Custodian of Records
(954) 503-7001 ext. 65943

INSFLTR